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4 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 ABEL ROBINSON,

7 Plaintiff,

8 v.

9 MIGUEL BALDERRAMA,

10 Defendants.

Case No. C17-6066 BHS-TLF

ORDER DIRECTING SERVICE OF  
CIVIL RIGHTS COMPLAINT

11 This is a civil rights action brought pursuant to 42 U.S.C. § 1983. Plaintiff is proceeding  
12 with this action *pro se* and *in forma pauperis*. The court previously issued an Order to Show  
13 Cause or Amend the Complaint, based upon its determination that the complaint did not  
14 adequately allege an Eighth Amendment claim for inadequate medical care. Dkt. 12. At the time  
15 of the prior order, claims under the Eighth and Fourteenth amendments were subject to the same  
16 standard. *Id.* However, since the date of that order, the United States Court of Appeals for the  
17 Ninth Circuit has held that a different, objective, standard applies to claims of inadequate  
18 medical care by a pre-trial detainee, which are analyzed under the Fourteenth Amendment.  
19 *Gordon v. County of Orange*, 888 F.3d 118, 1124-25 (9th Cir. 2018).

20 Although it is not clearly stated in the complaint, it appears to the Court that plaintiff  
21 might be a pre-trial detainee. If so, the standard applicable to his claims is now less stringent than  
22 is required for Eighth Amendment claims. Pursuant to *Gordon*, a pre-trial detainee must plead  
23 the following elements:  
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1 (i) the defendant made an intentional decision with respect to the conditions under  
2 which the plaintiff was confined; (ii) those conditions put the plaintiff at  
3 substantial risk of suffering serious harm; (iii) the defendant did not take  
4 reasonable available measures to abate that risk, even though a reasonable official  
in the circumstances would have appreciated the high degree of risk involved—  
making the consequences of defendant’s conduct obvious; and (iv) by not taking  
such measures, the defendant caused the plaintiff’s injuries.

5 888 F.3d at 1125. The third element requires only that defendant’s conduct be “objectively  
6 unreasonable”; unlike Eighth Amendment claims, there is no requirement that plaintiff establish  
7 that defendant subjectively knew of an excessive risk to inmate health or safety. *Id.* However,  
8 “the plaintiff must prove more than negligence but less than subjective intent—something akin to  
9 reckless disregard.” 888 F.3d at 1125.

10 This Court previously determined that the complaint did not meet the Eighth Amendment  
11 subjective standard, Dkt. 12; however, it is not clear that the complaint fails to comply with the  
12 Fourteenth Amendment objective standard set forth above, which would now apply if plaintiff  
13 were a pre-trial detainee. Accordingly, it does not appear to the Court at this stage of the  
14 litigation that the complaint is “frivolous, malicious, or fails to state a claim for which relief may  
15 be granted.” 28 U.S.C. §1915A(b).

16 The Court therefore ORDERS as follows:

17 (1) Service by Clerk

18 The Clerk is directed to send the following to defendant by first class mail: a copy of  
19 plaintiff’s Complaint, a copy of this Order, two copies of the notice of lawsuit and request for  
20 waiver of service of summons, a waiver of service of summons, and a return envelope, postage  
21 prepaid, addressed to the Clerk’s Office.

1           (2)     Response Required

2           Defendant(s) shall have **thirty (30) days** within which to return the enclosed waiver of  
3 service of summons. A defendant who timely returns the signed waiver shall have **sixty (60)**  
4 **days** after the date designated on the notice of lawsuit to file and serve an answer to the  
5 complaint or a motion permitted under Rule 12 of the Federal Rules of Civil Procedure.

6           A defendant who fails to timely return the signed waiver will be personally served with a  
7 summons and complaint, and may be required to pay the full costs of such service, pursuant to  
8 Rule 4(d)(2) of the Federal Rules of Civil Procedure. A defendant who has been personally  
9 served shall file an answer or motion permitted under Rule 12 within **thirty (30) days** after  
10 service.

11           (3)     Filing and Service by Parties, Generally

12           All attorneys admitted to practice before this Court are required to file documents  
13 electronically via the Court's CM/ECF system. Counsel are directed to the Court's website,  
14 [www.wawd.uscourts.gov](http://www.wawd.uscourts.gov), for a detailed description of the requirements for filing via CM/ECF.  
15 All non-attorneys, such as *pro se* parties and/or prisoners, may continue to file a paper original  
16 with the Clerk. All filings, whether filed electronically or in traditional paper format, must  
17 indicate in the upper right hand corner the name of the magistrate judge to whom the document  
18 is directed.

19           For any party filing electronically, when the total of all pages of a filing exceeds fifty  
20 (50) pages in length, a paper copy of the document (with tabs or other organizing aids as  
21 necessary) shall be delivered to the Clerk's Office for chambers. The chambers copy must be  
22 clearly marked with the words "Courtesy Copy of Electronic Filing for Chambers."

1 Any document filed with the Court must be accompanied by proof that it has been served  
2 upon all parties that have entered a notice of appearance in the underlying matter.

3 (4) Motions, Generally

4 Any request for court action shall be set forth in a motion, properly filed and served.  
5 Pursuant to LCR 7(b), any argument being offered in support of a motion shall be submitted as a  
6 part of the motion itself and not in a separate document. The motion shall include in its caption  
7 (immediately below the title of the motion) a designation of the date the motion is to be noted for  
8 consideration upon the Court's motion calendar.

9 Stipulated and agreed motions, motions to file over-length motions or briefs, motions for  
10 reconsideration, joint submissions pursuant to the option procedure established in LCR 37(a)(2),  
11 motions for default, requests for the clerk to enter default judgment, and motions for the court to  
12 enter default judgment where the opposing party has not appeared shall be noted for  
13 consideration on the day they are filed. *See* LCR 7(d)(1). All other non-dispositive motions shall  
14 be noted for consideration no earlier than the third Friday following filing and service of the  
15 motion. *See* LCR 7(d)(3). All dispositive motions shall be noted for consideration no earlier than  
16 the fourth Friday following filing and service of the motion. *Id.*

17 For electronic filers, all briefs and affidavits in opposition to either a dispositive or non-  
18 dispositive motion shall be filed and served not later than 11:59 p.m. on the Monday  
19 immediately preceding the date designated for consideration of the motion. If a party (i.e. a *pro*  
20 *se* litigant and/or prisoner) files a paper original, that opposition must be received in the Clerk's  
21 office by 4:30 p.m. on the Monday preceding the date of consideration.

1 The party making the motion may file and serve, not later than 11:59 p.m. (if filing  
2 electronically) or 4:30 p.m. (if filing a paper original with the Clerk's office) on the date  
3 designated for consideration of the motion, a reply to the opposing party's briefs and affidavits.

4 (5) Motions to Dismiss and Motions for Summary Judgment

5 Parties filing motions to dismiss pursuant to Rule 12 of the Federal Rules of Civil  
6 Procedure and motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil  
7 Procedure should acquaint themselves with those rules. As noted above, these motions shall be  
8 noted for consideration no earlier than the fourth Friday following filing and service of the  
9 motion.

10 Defendants filing motions to dismiss based on a failure to exhaust or motions for  
11 summary judgment are advised that they MUST serve a *Rand* notice concurrently with motions to  
12 dismiss based on a failure to exhaust and motions for summary judgment so that *pro se* prisoner  
13 plaintiffs will have fair, timely and adequate notice of what is required of them in order to  
14 oppose those motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). The Ninth Circuit has  
15 set forth model language for such notices:

16 A motion for summary judgment under Rule 56 of the Federal Rules of  
17 Civil Procedure will, if granted, end your case.

18 Rule 56 tells you what you must do in order to oppose a motion for summary  
19 judgment. Generally, summary judgment must be granted when there is no  
20 genuine issue of material fact – that is, if there is no real dispute about any  
21 fact that would affect the result of your case, the party who asked for  
22 summary judgment is entitled to judgment as a matter of law, which will  
23 end your case. When a party you are suing makes a motion for summary  
24 judgment that is properly supported by declarations (or other sworn  
25 testimony), you cannot simply rely on what your complaint says. Instead,  
**you must set out specific facts in declarations, depositions, answers to  
interrogatories, or authenticated documents, as provided in Rule 56(e),  
that contradict the facts shown in the defendant's declarations and  
documents and show that there is a genuine issue of material fact for  
trial. If you do not submit your own evidence in opposition, summary**

1 judgment, if appropriate, may be entered against you. If summary  
2 judgment is granted, your case will be dismissed and there will be no  
3 trial.

*Rand v. Rowland*, 154 F.3d 952, 963 (9th Cir. 1998) (emphasis added.)

4 Defendants who fail to file and serve the required *Rand* notice on plaintiff may have their  
5 motion stricken from the Court's calendar with leave to re-file.

6 (6) Direct Communications with District Judge or Magistrate Judge

7 No direct communication is to take place with the District Judge or Magistrate Judge with  
8 regard to this case. All relevant information and papers are to be directed to the Clerk.

9 (7) The Clerk is directed to send copies of this Order and of the Court's *pro se*  
10 instruction sheet to plaintiff.

11 Dated this 13th day of June, 2018.

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14 Theresa L. Fricke  
15 United States Magistrate Judge  
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